

From: [nancy munn](#)
To: [Eric Blischke/R10/USEPA/US@EPA](#)
Cc: [Robert Neely](#); [erin.madden@gmail.com](#); [Chip Humphrey/R10/USEPA/US@EPA](#); [Ben Meyer](#); [Genevieve Angle](#); [Mary Baker](#)
Subject: Re: management goals and programmatic consultation
Date: 08/10/2009 08:51 AM

I have been out of the office for a couple of weeks and am just catching up with emails, etc. NMFS has not committed to a programmatic approach, and has not discussed it with LWG. We have been sued on programmatic consultations, and are reluctant to embark on a programmatic consultation of this scope. Successful programmatic actions are when the actions are routine, predictable, and the effects are relatively minor or positive in nature. The clean-up action does not fit these criteria. I recommend the language be removed.

nancy

Blischke.Eric@epamail.epa.gov wrote:

> Erin and Rob, regarding the programmatic consultation. We removed this
> in previous versions. The LWG added it back in and did not understand
> why it was removed. My sense is that this language does not belong in
> the management goal but I did not see any harm in including it. If NOAA
> has any concerns whatsoever about this language, we will delete it
> consistent with Erin's revision of the RAO and management goal document.

> Eric

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Robert Neely
<Robert.Neely@noaa.gov>

08/05/2009 09:51 AM

To
Ben Meyer <Ben.Meyer@noaa.gov>,
Genevieve Angle
<Genevieve.Angle@noaa.gov>

CC
Nancy Munn <Nancy.Munn@noaa.gov>,
Eric Blischke/R10/USEPA/US@EPA,
Mary Baker <Mary.Baker@noaa.gov>

Subject
Re: management goals and
programmatic consultation

> Hey Ben -- here's the proposed language from LWG on the habitat remedial
> action objective regarding consultation. Note that Eric is planning to
> finalize this document tomorrow. I'm copying him on this message. Let's
> chat.

> Thanks,

> R

> Erin Madden wrote:

>

>> I am wondering if NOAA agrees with the statement about programmatic
>> consultation in management goal 3 of the draft final RAOs. The
>> management goal says:

>> * *

>> *Clean up contaminated sediments in a manner that promotes habitat
>> that will support a healthy aquatic ecosystem and the conservation and

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>> recovery of threatened and endangered species. *

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>> The goal is to ensure that sediment cleanup alternatives selected for
>> the site consider the benefits of re-establishing ecological habitats
>> in those areas remediated to support a diverse ecosystem. Sediment
>> remedial actions must comply with ARARs, including the Clean Water Act
>>
>> compensatory mitigation and Section 404(b)(1) analysis and the
>> Endangered Species Act. Other potential ARARs may include the Marine
>> Mammal Protection Act and/or Migratory Bird Treaty Act. The need for
>> habitat mitigation in conjunction with the remedial action
>> alternatives will be evaluated for each detailed sediment cleanup
>> alternative in the FS under the long term effectiveness and compliance

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>> with ARARs criteria and cost estimate analysis. For each detailed
>> alternative, the FS will evaluate reasonably anticipated future land
>> use with respect to habitat, including potential restoration
>> activities under the Natural Resource Damages Assessment process. The
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>> FS will also clearly describe the degree to which habitat mitigation
>> needs to be included to meet substantive requirements of potential
>> ARARs. To support this evaluation the LWG is seeking a programmatic
>> approach to addressing ESA issues with NOAA (including a programmatic
>> consultation) to help appropriately define the habitat impacts from
>> remediation and types of desirable mitigation and other reasonable and
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>> prudent measures. A programmatic approach would support a more
>> comprehensive and integrated watershed evaluation to promote the
>> conservation of species. For each detailed alternative, the FS will
>> clearly describe whether habitat mitigation needs to be included to
>> meet the substantive requirements of potential ARARs. This does not
>> include evaluation of any potential or needed habitat restoration
>> activities under the NRDA provisions of CERCLA, the Clean Water Act,
>> and the Oil Protection Act (OPA).
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>> I don't generally agree that programmatic consultation provides the
>> benefits stated here, but I'm not sure what kind of approach is being
>> considered. Any additional info you have would be helpful.
>>
>> erin
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>>
>> Erin Madden
>> Cascadia Law P.C.
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>> --
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>> (See attached file: robert_neely.vcf)
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